

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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In re:

ERIC JOHN DROGOSCH, an individual,
Respondent.

) Docket No. 11-0024
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DECISION AND ORDER
BY REASON OF DEFAULT
(FAILURE TO APPEAR)

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.)(the "Act"), by a complaint filed on October 21, 2010, by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondent violated the Act and the regulations promulgated thereunder.

Respondent Eric John Drogosch was duly notified in writing of the time and place of the oral hearing in this matter (November 27-30, 2012, at 300 West Belknap, Trial Room D, Fort Worth, Texas). Said respondent has failed to appear at the hearing, without good cause. Therefore, pursuant to section 1.141(e) of the applicable Rules of Practice, said respondent is "deemed to have waived the right to an oral hearing in the proceeding and to have admitted any facts which may be presented at the hearing." 7 C.F.R. § 1.141(e). Complainant has elected to follow the procedure set forth in section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). The material facts alleged in the complaint are all admitted by the respondent Drogosch's failure to appear at the hearing without good cause, and they are adopted and set forth herein as Findings of Fact and Conclusions of Law. This decision and order is issued pursuant to sections 1.139 and 1.141(e) of the Rules of Practice.

FINDINGS OF FACT

1. Respondent Eric John Drogosch is an individual who did or does business as Great Cat Adventures, and whose last known mailing address is 690 Highway 69/75, Atoka, Oklahoma 74525. At all times mentioned herein, said respondent was (1) operating as an exhibitor, as that term

is defined in the Act and the Regulations; or (2) acting for or employed by an exhibitor (respondent Palazzo), and his acts, omissions or failures within the scope of his employment or office are, pursuant to section 2139 of the Act (7 U.S.C. § 2139), deemed to be his own acts, omissions, or failures, as well as the acts, omissions, or failures of respondent Palazzo. Respondent Drogosch previously held AWA license number 74-C-0536, which license was revoked in 2004, by order of the Secretary.¹

2. Respondent Drogosch has previously been found to have violated the Act and the Regulations. Respondent Drogosch has knowingly failed to obey a cease and desist order issued by the Secretary.² Respondent Drogosch has not shown good faith. Respondent Drogosch, after having specifically been advised that the failure to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public, is a violation, have knowingly continued to violate the handling Regulations, and to do so in a manner that presents a serious risk of harm to both people and animals.

3. From approximately February 26, 2010, through September 1, 2010, respondent Drogosch operated as an exhibitor and/or a dealer, without having a valid license to do so.

4. On or about the following dates, respondent Drogosch failed to handle tigers as carefully as possible in a manner that does not cause behavioral stress, physical harm, or unnecessary discomfort:

¹*In re Eric John Drogosch, dba Animal Adventures America*, 63 Agric. Dec. 623 (2004) (Decision and Order).

²See Note 1.

- a. September 29, 2008 (Tulsa Fair Grounds, Tulsa, Oklahoma)
 - b. February 27, 2009 (Brownwood Intermediate School, Brownwood, Texas)
 - c. April 11, 2009 (Great Cat Adventures, Atoka, Oklahoma)
 - d. March 3, 2009 (Dublin Elementary School, Dublin, Texas)
 - e. August 7, 2008 (Washington Town and Country Fair, Washington, Missouri)
5. On or about the following dates, respondent Drogosch failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public:

- a. September 29, 2008 (Tulsa Fair Grounds, Tulsa, Oklahoma)
- b. February 27, 2009 (Brownwood Intermediate School, Brownwood, Texas)
- c. April 11, 2009 (Great Cat Adventures, Atoka, Oklahoma)
- d. March 3, 2009 (Dublin Elementary School, Dublin, Texas)
- e. August 7, 2008 (Washington Town and Country Fair, Washington, Missouri)

CONCLUSIONS OF LAW

1. From approximately February 26, 2010, through September 1, 2010 (a total of 157 days), respondent Drogosch operated as an exhibitor and/or a dealer, without having a valid license to do so, in willful violation of section 2134 of the Act, and sections 2.1 and 2.10 of the Regulations.

2. On or about the following five dates, respondent Drogosch failed to handle tigers as carefully as possible in a manner that does not cause behavioral stress, physical harm, or unnecessary discomfort, in willful violation of section 2.131(b)(1) of the Regulations. 9 C.F.R. § 2.131(b)(1):

- a. September 29, 2008 (Tulsa Fair Grounds, Tulsa, Oklahoma)

- b. February 27, 2009 (Brownwood Intermediate School, Brownwood, Texas)
- c. April 11, 2009 (Great Cat Adventures, Atoka, Oklahoma)
- d. March 3, 2009 (Dublin Elementary School, Dublin, Texas)
- e. August 7, 2008 (Washington Town and Country Fair, Washington, Missouri)

3. On or about the following five dates, respondent Drogosch failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public, in willful violation of section 2.131(c)(1) of the Regulations. 9 C.F.R. § 2.131(c)(1).

- a. September 29, 2008 (Tulsa Fair Grounds, Tulsa, Oklahoma)
- b. February 27, 2009 (Brownwood Intermediate School, Brownwood, Texas)
- c. April 11, 2009 (Great Cat Adventures, Atoka, Oklahoma)
- d. March 3, 2009 (Dublin Elementary School, Dublin, Texas)
- e. August 7, 2008 (Washington Town and Country Fair, Washington, Missouri)

4. Respondent Drogosch (a) violated section 2134 of the Act (7 U.S.C. § 2134), and sections 2.1 and 2.10 of the Regulations (9 C.F.R. §§ 2.1, 2.10), on 157 occasions; (b) violated section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)), on five occasions; and (c) violated section 2.131(c)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)), on five occasions.

5. In 167 instances, respondent Drogosch knowingly failed to obey a cease and desist order issued by the Secretary of Agriculture in *In re Eric John Drogosch, dba Animal Adventures America*, 63 Agric. Dec. 623 (2004)(Decision and Order).

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ORDER

1. Respondent Eric John Drogosch, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act, Regulations and Standards.

2. Respondent Eric John Drogosch is assessed a civil penalty of \$108,857 for his 167 violations herein.

3. Respondent Eric John Drogosch is assessed a civil penalty of \$27,550 for his knowing failures to obey the cease and desist order issued by the Secretary of Agriculture.

The provisions of this order shall become effective on the first day after this decision becomes final. This decision becomes final without further proceedings 35 days after service as provided in sections 1.142 and 1.145 of the Rules of Practice. Copies of this decision shall be served upon the parties.

Done at Washington, D.C.
this 27 day of Nov, 2012

A solid black rectangular box used to redact the signature of the Administrative Law Judge.

Jill S. Clifton
Administrative Law Judge